

E-FILED 11/16/2007

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROBERT SCHMIDT and THOMAS WALSH,
Plaintiffs,
v.
LEVI STRAUSS & CO., LAURA LIANG and
DOES 1-50,
Defendants.

No. C04-01026 RMW (HRL)

**ORDER ON DEFENDANT LEVI
STRAUSS & CO.'S MOTION FOR
CLARIFICATION**

[Docket No. 177]

RELATED COUNTER-ACTION

Defendant Levi Strauss & Co. ("LS&Co.") moves for clarification of this court's September 10, 2007 "Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Documents and a Privilege Log." Part of that underlying discovery dispute concerned documents that plaintiff Schmidt had in his possession when he was fired by LS&Co. Plaintiffs returned the documents in question to LS&Co. and then sought to have LS&Co. produce them in discovery. LS&Co. produced some, but not all of the documents; and, this court subsequently granted plaintiff's motion to compel. (*See* September 10, 2007 Order, Docket No. 176 at pp. 4-5).

The parties now dispute whether LS&Co. is obliged to produce all previously withheld documents or only a subset of them. Assuming LS&Co. is obliged to produce all documents,

the parties also disagree whether it may now prepare a privilege log for any of the documents it claims are privileged. This court took the matter under submission without oral argument.

Upon consideration of the moving and responding papers,¹ the court orders as follows:

The September 10, 2007 order was meant to require LS&Co. to produce all previously withheld documents, not just a subset of them. To the extent LS&Co. seems to be seeking reconsideration of that ruling, it has not presented any new material facts or law. LS&Co. shall produce all of the withheld documents **no later than November 30, 2007**.

As for any claimed privileged documents – to be sure, LS&Co. asserted in its underlying papers that some documents were privileged. But it made no attempt to substantiate its assertion – except, perhaps, for defense counsel’s suggestion at oral argument that the documents were privileged because they were created or received by Schmidt, who was an attorney in its tax department during his employment. Based on the record presented, the court expressed doubt as to LS&Co.’s assertions as to any privilege or waiver. Nevertheless, LS&Co. will be permitted an opportunity to now prepare a privilege log, so that any asserted privilege or protection can properly be assessed. *See* Fed.R.Civ.P. 26(b)(5). LS&Co.’s privilege log shall be produced **no later than November 30, 2007**.

IT IS SO ORDERED.

Dated: November 16, 2007


 HOWARD R. LLOYD
 UNITED STATES MAGISTRATE JUDGE

¹ Plaintiffs failed to timely file their opposition brief and offered no explanation for the delay. This is not the first time they have done so; and, they have previously been admonished to make timely filings. (*See* Docket No. 150, n. 1). This court has accepted and considered plaintiffs’ late-filed opposition because it does not find that there was undue prejudice to defendants by the delay. However, it takes a dim view of plaintiffs’ repeated and casual disregard of filing deadlines. In the future, plaintiffs shall be required to show good cause and lack of prejudice before their belated filings will be considered.

5:04-cv-1026 Notice will be electronically mailed to:

Joseph Heathcliff Ainley JAinley@popelka.com, gsimmons@popelka.com

Franklin Edward Bondonno fbondonno@popelka.com, dlee@popelka.com

Adi Herzberg aherzberg@gibsondunn.com, bhonniball@gibsondunn.com,
mjanky@gibsondunn.com

Philip Edward Kay phil@nosexualharassment.com

Rebecca Justice Lazarus rjustice@gibsondunn.com, rmcbain@gibsondunn.com

Jeffrey Alan Leon jleon@leonandleon.com, leonandleon@leonandleon.com

Jeffry William Lochner jlochner@popelka.com, jlochner@verizon.net,
kanderson@popelka.com

Sheila Marie Pierce sheila.pierce@bingham.com

Gabriel Neil Rubin grubin@stblaw.com, hlelaine@stblaw.com, jlaw@stblaw.com

Erin E. Schneider eschneider@gibsondunn.com

Austin Van Schwing aschwing@gibsondunn.com

Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.